



**UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office**

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/822,186	03/20/97	RUEGER	D CRP-137

JAMES F. HALEY  
FISH & NEAVE  
1251 AVENUE OF THE AMERICAS  
NEW YORK NY 10020-1104

HM22/1109

EXAMINER

ROMEO, D

ART UNIT	PAPER NUMBER
1647	30

DATE MAILED: 11/09/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

**Advisory Action**

Application No.

08/822,186

Applicant(s)

Rueger et al.

Examiner

David S. Romeo

Group Art Unit

1647



## THE PERIOD FOR RESPONSE: [check only a) or b)]

- a) ☐ expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☐ expires either three months from the mailing date of the final rejection, or on the mailing date of this Advisory Action, whichever is later. In no event, however, will the statutory period for the response expire later than six months from the date of the final rejection.

Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a), the proposed response and the appropriate fee. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for the purposes of determining the period of extension and the corresponding amount of the fee. Any extension fee pursuant to 37 CFR 1.17 will be calculated from the date of the originally set shortened statutory period for response or as set forth in b) above.

- ☒ Appellant's Brief is due two months from the date of the Notice of Appeal filed on 16 Oct 2000 (or within any period for response set forth above, whichever is later). See 37 CFR 1.191(d) and 37 CFR 1.192(a).

Applicant's response to the final rejection, filed on 16 Oct 2000 has been considered with the following effect, but is NOT deemed to place the application in condition for allowance:

- ☒ The proposed amendment(s):

- ☐ will be entered upon filing of a Notice of Appeal and an Appeal Brief.
- ☒ will not be entered because:
- ☒ they raise new issues that would require further consideration and/or search. (See note below).
  - ☒ they raise the issue of new matter. (See note below).
  - ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.
  - ☐ they present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: See the attachment.

- ☐ Applicant's response has overcome the following rejection(s):

- ☐ Newly proposed or amended claims \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment cancelling the non-allowable claims.

- ☒ The affidavit, exhibit or request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See the attachment.

- ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

- ☒ For purposes of Appeal, the status of the claims is as follows (see attached written explanation, if any):

Claims allowed: None

Claims objected to: None

Claims rejected: 1-25, 31-33, 35, and 36

- ☐ The proposed drawing correction filed on \_\_\_\_\_ ☐ has ☐ has not been approved by the Examiner.

- ☐ Note the attached Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

- ☐ Other \_\_\_\_\_

*David S. Romeo*  
DAVID S. ROMEO  
PRIMARY EXAMINER  
ART UNIT 1647

Art Unit: 1647

**Attachment to Paper No. 30 (Advisory Action)**

1. The proposed amendment(s) will not be entered because:

a. they raise new issues that would require further consideration and/or search. The proposed amendment would require a search for and/or a motivation to make a "purified osteogenic protein being not associated with other osteogenic proteins with which it is normally associated *in vivo*". The proposed amendment would require further consideration of a device comprising "a matrix that does not comprise a synthetic polymer or demineralized bone".

b. they raise the issue of new matter. The examiner cannot find support for the limitation a "purified osteogenic protein being not associated with other osteogenic proteins with which it is normally associated *in vivo*" at page 40, lines 7-11 and 19-22.

2. The affidavit, exhibit or request for reconsideration has been considered but does NOT place the application in condition for allowance because: Applicants arguments are directed to the proposed amended claims and the amendments to the claims have not been entered.

3. Applicants' response would have overcome the following rejection(s) if the proposed amendments had been entered:

a. The rejection of claim(s) 2, 3 under 35 U.S.C. 112, second paragraph, over the recitation of "conservative amino acid sequence variants".

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b. The rejection of claim(s) 1-6, 9-16, 32, 33, 35, 36 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5 Any inquiry concerning this communication or earlier communications from the examiner should be directed to David S. Romeo whose telephone number is (703) 305-4050. The examiner can normally be reached on Monday through Friday from 6:45 a.m. to 3:15 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Kunz, can be reached on (703) 308-4623.

10 Official papers filed by fax should be directed to (703) 308-4242.  
Faxed draft or informal communications should be directed to the examiner at (703) 308-0294.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

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*David Romeo*  
David Romeo  
Primary Examiner  
November 9, 2000